

## **REMARKS**

This reply is in response to the Final Office Action dated May 29, 2009 and the Advisory Action of August 7, 2009.

Upon entry of the above-described amendments, claims 1-10, 12-20, 23-47, 49-65, and 143-198 will be pending.

Claims 66-142 will be cancelled without prejudice. Applicants reserve the right to refile claims directed to the subject matter of the cancelled claims in a future divisional application.

Claims 1, 28, 143, and 173 are amended as reflected in the above listing of claims. No new matter has been added. Claims 1-10, 12-20, 23-47, and 49-198 stand rejected.

Reconsideration and allowance of the claims is respectfully requested.

### **Request for Examiner Interview**

If the examiner elects to maintain the current §112 rejections, Applicants request an Examiner interview. Applicants believe a discussion of these issues will advance the prosecution of this application.

### **Claim Rejections – 35 USC § 112**

Claims 1-10, 12-20, 23-47, 49-65, 143-146, 148-176 and 178-198 stand rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement.

The Office Action alleges that “it is not clear from the specification that ‘low’ and ‘high’ are synonymous with ‘lower’ and ‘higher’.” (Office Action at page 2.)

As amended, the claims clearly described ranges of crystallinity and clarify that the low crystallinity polymer has a lower crystallinity compared to the higher crystallinity polymer, i.e., greater than 40% polypropylene crystallinity for the high crystallinity polymer. Thus, the “low” vs “high” concept identified in the Office Action refers to low/high relative to one another, not to a separate standard. See Aug. 7, 2009 Advisory Action at p.2.

The written description requirement is met even when the language used in the claims is not in *ipsis verbis* in the specification. (See MPEP §2163(II)(A)(3)(a), “If a skilled artisan would

have understood the inventor to be in possession of the claimed invention at the time of filing, even if every nuance of the claims is not explicitly described in the specification, then the adequate description requirement is met.”) For all of the foregoing reasons, the written description requirement is met by the claims as amended.

Applicants respectfully request withdrawal of the rejection and allowance of the claims.

The claims have additionally been rejected under 35 U.S.C. § 112, first paragraph, because there is allegedly “no support in the original disclosure for the limitation ‘about’ 60 or less.” Applicants have amended the independent claims to remove the word “about,” thus obviating the rejection.

Claims 1-10, 12-20, 23-47, 49-65, 143-146, 148-176 and 178-198 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicants traverse.

The specification describes “high crystallinity polymer” and “low crystallinity polymer”. Each section of the specification describes properties of such polymers. Such descriptions are the basis for Applicant’s claims. The Advisory Action acknowledges that the proposed amendments are supported by the specification.

The Advisory Action applies an incorrect standard in alleging that Applicants must “set forth limitations which they believe are inherent to ‘low’ and ‘high’ crystallinity polymers”. Applicants claim high/low crystallinity polymers based on the limitations described only in the claims, not on *some or all* inherent features, as suggested by the Examiner. The proposed claim convention regarding “inherency”/“inherent features” is not required under §112.

Arguments reproduce the following arguments from the July 29, 2009 response to provide a fully responsive submission:

The Office Action alleges that “it is unclear what is meant by ‘low’ and ‘high’ crystallinity.” (Office Action at page 3.) Applicants respectfully disagree, and contend that the application clearly sets forth not only methods for measuring crystallinity and related properties such as melting point and heat of fusion, but also the differences in those properties which distinguish the lower crystallinity polymer from the higher crystallinity polymer. (See, for example, paragraphs [0039], [0043]-[0045], [0072], and [0081]-[0083].) Applicants have,

however, amended the claims to further specify the crystallinity of the claimed polymers in an effort to remove outstanding issues and expedite prosecution of the application.

As reflected in the listing of claims, above, the independent claims have been amended to specify that the lower crystallinity polymer has a polypropylene crystallinity of from 3% to 40%, as determined by DSC. Support for this amendment is found in the specification in at least paragraphs [0043] and [0044]. The claims have further been amended to specify that that higher crystallinity polymer has a polypropylene crystallinity higher than that of the lower crystallinity polymer. Support for this amendment is found in the specification in at least paragraph [0083].

Withdrawal of the rejection and allowance of the claims is respectfully requested.

#### **Claim Rejections – 35 USC § 102 and § 103**

Applicants thank the Examiner for acknowledging that the proposed amendments “clearly distinguish claimed invention from the prior art.” See Aug. 7, 2009 Advisory Action. Applicants understand that these rejections will be withdrawn upon entry of the above-described amendments. Applicants enclose the following arguments solely for the purpose of assuring that this submission is fully responsive.

#### **Claim Rejections – 35 USC § 102 and § 103**

Claims 1-10 12-20, 23-47, 49-65, 143-146, 148-176 and 178-198 stand rejected under 35 U.S.C. § 102(b) as anticipated by or, in the alternative, under 35 U.S.C. § 103(a) as obvious over Tsurutani et al. (U.S. Patent No. 5,472,792; hereafter “Tsurutani”).

Applicants respectfully submit that the pending claims, as amended, are not anticipated by nor rendered obvious by Tsurutani. At the very least, Tsurutani does not teach, disclose, or suggest a first layer comprising a lower crystallinity polymer having 72-90 wt% propylene, 10-20 wt% ethylene, a melting point from 20-110 °C, a Mooney viscosity of 60 or less, and a polypropylene crystallinity of from 3-40%; and a second layer comprising a higher crystallinity polymer comprising polypropylene and having a melting point at least 25 °C higher than that of the lower crystallinity polymer and a polypropylene crystallinity which is higher than that of the lower crystallinity polymer, as required in every claim.

The Office Action asserts that the amorphous propylene copolymer disclosed by Tsurutani is equivalent to the lower crystallinity polymer claimed herein. This assumption is in error, as the term “amorphous” is understood by those of skill in the art to mean a polymer which lacks crystallinity (usually indicated by no measurable melting point). In contrast, the lower crystallinity polymers of the present invention have a polypropylene crystallinity of between 3 and 40%, and have measurable melting points of between 20 and 110 °C. Clearly the amorphous polymers of Tsurutani are not equivalent to the lower crystallinity polymers of the present invention.

For at least the foregoing reasons, the claims are not anticipated nor rendered obvious by Tsurutani. Applicants respectfully request withdrawal of the rejections and allowance of the claims.

**CONCLUSION**

If there are any questions regarding this amendment or the application in general, a telephone call to the undersigned would be appreciated, since this should expedite the prosecution of the application for all concerned.

If necessary to affect a timely response, this paper should be considered as a petition for an Extension of Time sufficient to affect a timely response. Please charge any deficiency in fees or credit any overpayments to Deposit Account No. 05-1712 (Docket #: 2003B002/2).

Respectfully submitted,

August 31, 2009

Date

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